

with approval this practice of “versioning,” because versioning “ensures that system changes and enhancements do not adversely affect a carrier’s ability to access the BOC’s OSS.”

Massachusetts 271 Order ¶ 107, quoting *Texas 271 Order*, 15 FCC Rcd at 18408 ¶ 115; see *Qwest 9-State Order* ¶ 140.

HP’s comprehensive evaluation of SATE in Arizona supports the conclusion that SATE is adequate to meet the Section 271 requirements, as the FCC noted in the 9-State proceeding. *Qwest 9-State Order* ¶ 137 & n.509. HP conducted transaction testing to “assess[] the adequacy of Qwest’s IMA-EDI SATE to facilitate CLECs in testing their EDI interfaces and to determine to what degree” SATE mirrors production. HP SATE Summary Evaluation Report for Qwest IMA-EDI, Final Release, version 3.0, December 21, 2001, at Section 6.1 (OSS Decl. Exh. LN-OSS-176). After completing this comprehensive evaluation, HP concluded that “SATE is adequate to support Qwest CLEC Testing in the State of Arizona, given the current level of CLEC usage.” *Id.*, Section 1.1. OSS Decl. ¶ 830.

The results of the ROC Third Party Test provide additional support that SATE meets the requirements of Section 271. KPMG (with pseudo-CLEC HP) evaluated Qwest’s EDI interface testing environments and documentation in Test 24.6. KPMG found that Qwest had satisfied the vast majority of test criteria for interface testing. ROC Final Report at 575; OSS Decl. ¶¶ 835-840. For example, KPMG concluded that “carrier-to-carrier-test environments are available and segregated from Qwest production and development environments.” ROC Final Report at 581-82.

The only EDI interface evaluation criterion that KPMG found unsatisfied in the Final Report is whether “a functional test environment is made available to customers for all supported interfaces.” Evaluation Criterion 24.6-1-8; ROC Final Report at 580-581. Related to this finding are two closed unresolved exceptions, E3077 and E3095. As the Commission

concluded in the 9-State proceeding, and as discussed below and in the OSS Declaration, the issues raised by KPMG are not significant under Section 271. 47/

In one of the exceptions, KPMG noted that “SATE transactions are manually generated, and that the environment does not support flow-through transactions.” ROC Final Report at 580-581, *citing* Exception 3077. As the Commission recognized, Qwest has addressed these issues through the implementation of automated responses (VICKI) in January 2002 and through the implementation of flow-through capability and a test service order processor in May 2002. OSS Decl. ¶¶ 849-850; *see Qwest 9-State Order* ¶ 137 & n.508.

In Exception 3077, KPMG also commented that “the data contained within the order responses is not consistent and may not mirror the data that would be found in production responses.” 48/ The Commission in the 9-State proceeding concluded, however, that SATE does in fact “mirror production” within the meaning of Section 271. *Qwest 9-State Order* ¶ 139. The Commission rejected concerns that SATE does not always provide the identical response that would be received in production. *Id.* The Commission recognized that although responses in SATE may on occasion differ from production, this does not affect a CLEC’s ability to test its code. *Id.*; OSS Decl. ¶¶ 789, 801, 805-806. Any known differences between SATE and production are noted, published, and discussed with CLECs. *Id.* ¶ 770 & n.1160, ¶ 807 & n.1210, ¶ 853. If a CLEC wishes to add a particular test scenario or response to SATE, Qwest will add it within ten days of approval. *Id.* ¶ 781. Significantly, no CLEC to date has requested

47/ See *Qwest 9-State Order* ¶¶ 137 & n.508, 141. KPMG also issued a closed unresolved exception regarding Qwest’s maintenance and repair interface, EB-TA. As the Commission found in the Qwest 9-State proceeding, and as discussed in the OSS Declaration, that exception (E3109) does not raise Section 271 issues because the FCC does not require BOCs to provide application-to-application maintenance and repair interfaces. See *Qwest 9-State Order* ¶ 153 & n.572; OSS Decl. ¶¶ 863-870.

the addition of any error message to SATE. *Id.* For these reasons, the FCC concluded that SATE satisfies the Section 271 “mirroring production” requirement. *Qwest 9-State Order* ¶ 139.

KPMG also took issue with the range of products available for testing in SATE. ROC Final Report at 580-81 (citing Exception 3095). As the Commission held in the 9-State Order, this is not an issue under Section 271. *Qwest 9-State Order* ¶ 141. SATE was developed to include testing of all resale and UNE products that CLECs were ordering through IMA-EDI. OSS Decl. ¶ 784. The change management process is available and has been used by CLECs and Qwest to add products to SATE. *Id.* In addition, the ACC Staff has accepted Qwest’s proposal (to which AT&T agreed) for adding to SATE those products for which there have been 100 or more transactions within the previous 12-month period. OSS Decl. ¶ 860 and Exhibit LN-OSS-187; *see Qwest 9-State Order* ¶ 141 & n.531. Finally, the Interoperability Environment is available for testing any Qwest product offered in production. OSS Decl. ¶ 768.

5. Efficacy of the documentation used by CLECs to build an EDI interface.

Qwest provides CLECs with assistance in developing an EDI interface by (1) providing CLECs with a well-documented EDI development process; (2) maintaining a CLEC-specific IMA-EDI development team; (3) making available detailed interface design specifications and other documentation; (4) working with CLECs on EDI development through the change management process; and (5) providing technical assistance and other support. OSS Decl. ¶¶ 727-747. As the Commission concluded in the 9-State proceeding, Qwest’s EDI documentation satisfies the requirements of Section 271. *Qwest 9-State Order* ¶ 144.

As of July 14, 2003, 32 CLECs had been certified to use Qwest’s EDI and gone into production. *Id.* ¶ 748 and Confidential Exh. LN-OSS-138. One PID, PO-16, is relevant to

^{48/} KPMG Second Response on E3077, January 24, 2002, Att. 5, App. G, at 3. *See also* OSS Decl. ¶ 843.

the adequacy of Qwest's documentation. It measures the timeliness of Qwest's release notifications for specified OSS interfaces, including EDI. OSS Decl. ¶ 749; 14-State PID 5.0 at 24-25 (PO-16). Qwest has satisfied this PID continually since March 2002. OSS Decl. ¶ 749; Arizona Commercial Performance Results at 97 (PO-16). The results of the Arizona and ROC Third Party Tests also confirm that Qwest has satisfied this aspect of the FCC's Section 271 requirements. *See* OSS Decl. ¶¶ 751-759. Qwest satisfied all applicable tests related to EDI documentation. *Id.*

The extensive nature of Qwest's EDI documentation, the commercial data showing successful implementation of CLEC EDI interfaces, and the results of the Third Party Tests, all demonstrate the "efficacy of Qwest's EDI documentation" in enabling CLECs to build an electronic gateway. *Qwest 9-State Order* ¶ 144 and App. K ¶ 442.

6. Technical assistance. As part of its Section 271 analysis, the FCC evaluates whether the BOC "is adequately assisting competing carriers to understand how to implement and use all of the OSS functions available to them." *Qwest 9-State Order*, App. K ¶ 40 (quoting *New York 271 Order*, 15 FCC Rcd at 3999-4000 ¶ 102). ^{49/} Qwest fully satisfies this test.

Qwest offers CLECs an extensive array of training and assistance, including personalized guidance when establishing OSS interoperability (*i.e.*, a CLEC-specific implementation team); access to wholesale website information, including a lengthy PCAT; instructor-led classroom training on multiple OSS-related topics; web-based interactive training; multiple handbooks; and widely available Help Desk support for trouble-shooting and problem-solving. OSS Decl. ¶¶ 651-695. Qwest also maintains an extensive account establishment and

^{49/} We note that the Commission did not separately analyze the adequacy of technical assistance provided to CLECs in connection with OSS in the *Qwest 9-State Order*, although it did conclude that Qwest satisfied all the Section 271 change management criteria. *See Qwest 9-State Order* ¶ 132 and App. K ¶¶ 40-42.

management team to assist CLECs in setting up and maintaining their relationship with Qwest.

Id. ¶ 659 and Exh. LAH-OSS-126.

Qwest has met or exceeded the benchmark for the PID that is relevant to technical assistance for the last four months ending in June. OP-2 evaluates the timeliness with which Qwest responds to CLEC calls placed to the Wholesale Markets Help Desk. Buhler Decl. ¶ 156; 14-State PID 5.0 at 26 (OP-2). The Arizona and ROC Third Party Tests also evaluated Qwest's technical assistance and found, with one minor exception, that all relevant test criteria were satisfied. ^{50/}

7. *Pattern of compliance with the change management process.* As the Commission concluded in the 9-State proceeding, Qwest has demonstrated a pattern of compliance over time with its change management procedures. *Qwest 9-State Order* ¶¶ 134-140 and App. K ¶ 42.

Qwest's pattern of compliance continues to be strong. First, Qwest promptly implemented every aspect of the redesigned change management plan as soon as it was agreed upon in the joint CLEC/Qwest redesign process. CMP Decl. Sections III(B), V(D) and Exhibit JMS-CMP-4 (column 2). Most of the key provisions of the redesigned CMP have been in place for at least 19 months. They include the following aspects of the CMP Framework: Scope, Meetings, Types of Changes, CLEC and Qwest OSS Interface CR Processing, CLEC Product and Process CR Processing, OSS Interface Release Calendar, Introduction/Change/Retirement of

^{50/} See OSS Decl. § VIII(A)(3). The one exception is ROC test criterion 24.3-9, which involved the timeliness of Qwest's responses to customer calls to its systems help desk. ROC Final Report at 542. Qwest has addressed this issue, but KPMG concluded it was "unable to determine" Qwest's satisfaction of this criterion because KPMG did not have the opportunity to evaluate the improvements Qwest made by the close of the test. ROC Final Report at 542. See OSS Decl. ¶ 710-711.

OSS Interfaces, Prioritization (except for Regulatory and Industry Guideline changes and packaging), and Escalation and Dispute Resolution. CMP Decl. ¶ 134.

Second, Qwest has a solid record in meeting its obligations with respect to the various provisions and process milestones established in the CMP Framework, as discussed below. In Section V(D) of the CMP Declaration and the accompanying Exhibit JMS-CMP-4, Qwest describes on a section-by-section basis its record of implementation and compliance with the CMP Framework through June 30, 2003. Qwest has compiled an impressive record of performance since the date of implementation (indicated in parentheses) with respect to each of the key elements of its plan (CMP Decl. ¶ 140):

- In processing OSS Interface CRs, Qwest has met 99.62% of its commitments (since November 1, 2001).
- In processing CLEC-initiated product and process CRs, Qwest has met 99.03% of its commitments (since November 1, 2001).
- In processing Qwest-initiated Level 4 product and process CRs, Qwest has met 99.38% of its commitments. In processing Qwest-initiated product and process notification requirements for Level 1, Level 2, Level 3, and Level 4 changes, Qwest has met 99.74% of its commitments (both since April 1, 2002).
- In introducing a new Application-to-Application Interface (ASR Pre-Order Via XML has a release production date of September 15, 2003), Qwest has met 100% of the milestones thus far (since November 1, 2001).
- In introducing a new GUI, Qwest has met 100% of the milestones (since November 1, 2001).
- In changing an application-to-application interface, Qwest has met 100% of the milestones (since November 1, 2001).
- In changing a GUI, Qwest has met 100% of the milestones (since November 1, 2001).
- In retiring an existing GUI, Qwest has met 100% of the milestones (since November 2001).

- In issuing production support planned outage notifications, Qwest has issued 98.41% on a timely basis (since February 2002).
- In processing escalations, Qwest has met 99.26% percent of its commitments (since November 16, 2001).
- In issuing OSS interface release notifications, Qwest has issued 100% on a timely basis (since April 4, 2002).

Qwest also has complied with other provisions of the CMP Framework since they were implemented, as shown in the CMP Declaration, Section V and Exhibit JMS-CMP-4.

Qwest has populated and maintained its website with CMP-related documents, as provided by the CMP Framework, and has posted and updated its OSS Interface Release Calendar. CMP Decl. ¶¶ 116-118. Qwest also has met its obligations to (1) track and document the status of change requests; (2) hold regular CMP meetings; (3) provide meeting materials in advance of the meetings; and (4) record meeting discussion, action items, and issues. CMP Decl. ¶ 144 and Exhibit JMS-CMP-4. Qwest also has met its commitment, which became effective January 2, 2002, to provide green highlighting of all changes to its PCAT and, since January 2003, to provide redlining of such changes (over 1,000 changes since January 2002). CMP Decl. ¶ 165. Qwest also has met its commitment to redline all changes to its technical publications (approximately 18 since January 2002), and to provide CLECs opportunities to comment on changes to these documents. *Id.* For IMA-EDI releases 10.0 and 11.0, Qwest met every milestone. *Id.* ¶¶ 152-153. With respect to the PID applicable to the change management process, PO-16 (measuring timeliness of release notifications), Qwest met the benchmark for each of the last four months. *Id.* ¶ 154; Arizona Commercial Performance Results at 97 (PO-16).

Qwest also has complied with the CMP prioritization procedures. In August 2001, and again in October/November 2001, CLECs and Qwest jointly prioritized CLEC- and Qwest- initiated CRs for the IMA 10.0 release. CMP Decl. ¶ 157. In February 2002, they

prioritized CLEC and Qwest initiated CRs and Industry Guideline CRs for the IMA 11.0 release.

Id. In July 2002, CLECs and Qwest jointly prioritized CRs for the IMA 12.0 release. *Id.* In December 2002, CLECs and Qwest jointly prioritized CRs for the IMA 13.0 release, and in March 2003 they did so for the IMA 14.0 Release. *Id.*

CGE&Y, the third party test consultant in Arizona, reached positive conclusions with respect to Qwest's change management plan, as did the ACC Staff. 51/ KPMG also evaluated Qwest's change management process in the ROC Third Party Test, Test 23. 52/ Of 18 test criteria, KPMG found 11 satisfied and none unsatisfied, and classified the other seven as "unable to determine." ROC Final Report at 51, 513-32 (Table 23-2: Evaluation Criteria and Results). Overall, the KPMG results are positive and support the conclusion that Qwest has met all the criteria identified by the FCC as relevant under Section 271.

For the most part, the issues remaining "unable to determine" by KPMG involved elements of the Qwest change management plan that are outside what the FCC has required for Section 271 purposes (*i.e.* changes to products and processes, postponement procedures, prioritization of regulatory changes, and the Special Change Request Process ("SCRP")). *See* ROC Final Report at 526, 531; CMP Decl. ¶¶ 109-112. 53/ Because these elements of the CMP

51/ CMP Decl. ¶¶ 100-101, Exh. JMS-CMP-8 (CGE&Y May 1, 2002 Report on Qwest CMP and Redesign Process), and Exh. JMS-CMP-9 (ACC Staff Supplemental Report on Change Management (May 7, 2002) ¶ 86). The ACC Staff recommended that the ACC find that Qwest meets the FCC requirements for change management, subject to certain data reporting and verification conditions, to which Qwest has agreed. ACC Staff Supplemental Report ¶¶ 88-94; CMP Decl. ¶ 101 and Exh. LN-OSS-179 (Qwest's Comments Regarding CGE&Y's Final Report, May 17, 2002).

52/ Other KPMG tests are relevant to certain other FCC change management criteria (EDI documentation, technical assistance, and interface testing) and are discussed above in the appropriate section and in Section VIII of the OSS Declaration.

53/ The principal exception to this is KPMG's concern about Qwest's procedures for tracking and issuing systems notifications. *See* ROC Final Report at 519-20, 523-25. This is not a concern, however, because Qwest has had improved procedures in place since April 1, 2002, and

Framework had been agreed upon and implemented shortly before the close of the test, KPMG did not have a lengthy opportunity to evaluate them. *See* CMP Decl. Exh. JMS-CMP-4. The Commission recognized this, but concluded in the 9-State proceeding that Qwest met each of the Section 271 change management criteria, notwithstanding that KPMG was not able to test every aspect of the Qwest CMP. *Qwest 9-State Order* ¶¶ 133-136, 145-152.

IV. QWEST'S PRICES FOR UNBUNDLED NETWORK ELEMENTS ARE WITHIN OR BELOW THE RANGE PRODUCED BY THE FCC'S TELRIC METHODOLOGY

Qwest's rates for UNEs and other interconnection offerings in Arizona comply with Section 252(d)(1) of the Act and are within or below the range established by the Commission's established pricing rules, including Total Element Long Run Incremental Cost ("TELRIC"). 47 U.S.C. § 252(d)(1); 47 C.F.R. § 51.501 *et seq.* As discussed in the Declaration of Jerrold Thompson, Cost-Based Rates for Unbundled Network Elements and Interconnection, Att. 5, App. A ("Thompson Pricing Decl.") the ACC conducted comprehensive and open cost proceedings, involving a full array of CLECs, and established rates that are within or below the reasonable TELRIC range. *See* Thompson Pricing Decl. ¶¶ 6-13. The ACC completed its most recent UNE pricing proceeding with an order issued on June 12, 2002. *See Investigation into Qwest Corporation's Compliance with Certain Wholesale Pricing Requirements For Unbundled Network Elements and Resale Discounts*, Docket No. T-00000A-00-0194 (Phase II), Decision No. 64922 (Ariz. Corp. Comm'n, June 12, 2002) ("*2002 Generic Pricing Order*") (Att. 5, App. P). While Qwest appealed various aspects of the *2002 Generic Pricing Order* to the U.S.

has established a perfect record of compliance since that time. *See also* CMP Decl. ¶¶ 154-155; *Qwest 9-State Order* ¶ 152.

District Court for the District of Arizona pursuant to Section 252(e)(6) of the Act, 54/ Qwest and the Arizona Commission Staff on July 25, 2003 jointly submitted a Settlement Agreement providing, among other things, that within 30 days of the date on which the Arizona Commission approves the Settlement Agreement, Qwest would voluntarily move to dismiss this appeal with prejudice. The Arizona Commission is in the process of considering the Settlement Agreement.

Qwest believes that the rates ordered by the Arizona Commission do not exceed TELRIC compliant levels and stand on their own without comparison to other state rates. Nonetheless, a “benchmark” analysis comparable to that used in earlier Section 271 decisions reveals that the recurring rates for the elements included in UNE-P are well below the corresponding rates established by the CPUC, even after adjusting the Colorado rates to reflect the slightly lower costs in Arizona. 55/ The benchmark analysis proceeds as follows. First, for each major group of rate elements associated with UNE-P, Qwest compared the existing rates in Arizona with “Colorado benchmarked rates” – that is, rates produced by multiplying each corresponding Colorado rate by the cost ratio between Arizona and Colorado predicted by the adjusted version of the FCC’s Synthesis Model used in prior Section 271 decisions. 56/ Qwest

54/ Qwest will not seek a stay of the *2002 Generic Pricing Order* rates going forward during the period that this appeal is pending. Qwest further commits that, in the event the appeal is not settled, and to the extent that the federal court finds in favor of Qwest in connection with the appeal, Qwest will not retroactively seek additional payments from CLECs as a result of that decision for interconnection services provided by Qwest during the period from the date of filing of the instant Section 271 application to the date of the federal court decision.

55/ The Commission has confirmed that the rates established by the CPUC “are consistent with TELRIC principles and meet the requirements of checklist item two.” *Qwest 9-State Order* ¶ 192; *see generally id.* ¶¶ 186-227. *See also id.* ¶¶ 322-347 (affirming that Qwest’s rates for interconnection and collocation in Colorado and the other eight states included in the 9-State application comply with checklist item one).

56/ *See, e.g., Pennsylvania 271 Order*, 16 FCC Rcd at 17458 n.249 (model adjusted to reduce overhead cost and spread over all elements, to incorporate cost of access usage as well as local

conducted this analysis for two groups of elements: (1) unbundled loops; and (2) a composite of local switching (including the local switch usage and switch port elements) and shared transport (which includes tandem switching). Each rate element in Arizona is below the level of the corresponding, adjusted Colorado rate. *See* Thompson Pricing Decl. ¶¶ 44-48; *see also* *Qwest 9-State 271 Order* ¶¶ 280-311 (approving Qwest's use of similar benchmark analysis to demonstrate that UNE rates comply with TELRIC). With respect to non-recurring charges relating to installation of unbundled loops, Qwest's Arizona rates are uniformly lower than the corresponding Colorado rates. ^{57/} Thompson Pricing Decl. ¶ 49.

V. QWEST WILL PROVIDE INTERLATA SERVICES IN COMPLIANCE WITH THE REQUIREMENTS OF SECTION 272

Qwest is fully committed to providing all services that are subject to the requirements of Section 272 through a separate affiliate that complies with the requirements of that section and the Commission's rules. ^{58/} The Commission already has found that Qwest satisfied this requirement in granting three previous Section 271 orders. *See* *Qwest 9-State*

usage into usage-sensitive elements, and to include allowance for wholesale uncollectibles rather than retail uncollectibles).

^{57/} Since it is inappropriate to use the Commission's cost model to adjust non-recurring charges on a state-specific basis, the Commission compares the absolute rate levels of non-recurring charges between the applicant state and the benchmark state without making cost adjustments. *See, e.g., Arkansas/Missouri 271 Order*, 16 FCC Rcd at 20747 ¶ 57 n.159, 20753 ¶ 71, 20755 ¶ 74.

^{58/} QLDC and QCC both have received authority pursuant to Section 214 of the Act to provide international services originating in in-region states as Section 271 authority is granted for each state. *See* International Bureau Policy Division Grants Qwest Communications International Section 214 Authority for Colorado, Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, Washington and Wyoming, and Conditional Authority for Arizona, Minnesota, New Mexico, Oregon and South Dakota, Public Notice, DA 02-3598, FCC File No. ITC-214-20021009-00495 (Dec. 26, 2002) (granting international Section 214 authority to QLDC); International Authorizations Granted, Public Notice Report No. TEL-00644, DA 03-632, FCC File No. ITC-214-20030117-00022 (Mar. 6, 2003) (granting international Section 214 authority to QCC).

Order ¶ 380; *Qwest 3-State Order* ¶ 113; *Qwest Minnesota Order* ¶ 63. The relevant facts, and the Commission's analysis, are the same here.

Section 272 defines how a BOC, here QC, and any affiliate offering in-region interLATA services must operate once the BOC receives Section 271 authority. The Commission set standards for compliance with Section 272 in the *Accounting Safeguards Order* and the *Non-Accounting Safeguards Order*. Together, these safeguards are intended to discourage and facilitate the detection of improper cost allocation and cross-subsidization between the BOC and its Section 272 affiliate. ^{59/} In addition, these safeguards are intended to ensure that the BOC does not discriminate in favor of its Section 272 affiliate. ^{60/} To satisfy Section 271(d)(3)(B), the BOC must present evidence that it is prepared to operate under the terms of Section 272 once it is granted authorization to provide in-region interLATA services. In essence, the Commission makes a "predictive judgment" about whether the BOC applicant will comply with Section 272. ^{61/}

In the *Qwest 9-State Order*, the Commission discussed the nature of this predictive judgment, holding that "our task is to determine whether Qwest's section 272 affiliate . . . will be complying with this requirement on the date of authorization, and thereafter. In making that predictive judgment, we are informed by the past and current actions of [the 272 affiliate], including . . . measures taken by Qwest that affect our predictive analysis." *Qwest 9-*

^{59/} *Non-Accounting Safeguards Order*, 11 FCC Rcd at 21914; *Accounting Safeguards Order*, 11 FCC Rcd at 17550; *Arkansas/Missouri 271 Order*, 16 FCC Rcd at 20,780 ¶ 122.

^{60/} *Non-Accounting Safeguards Order*, 11 FCC Rcd at 21914 ¶¶ 15-16; *Michigan 271 Order*, 12 FCC Rcd at 20725 ¶ 346; *Arkansas/Missouri 271 Order*, 16 FCC Rcd at 20,780 ¶ 122.

^{61/} *Michigan 271 Order*, 12 FCC Rcd at 20715 ¶ 347 ("Section 271(d)(3)(B) requires the Commission to make a finding that the BOC applicant will comply with section 272, in essence a predictive judgment regarding the future behavior of the BOC."); *see also Second Louisiana 271 Order*, 3 FCC Rcd at 20785 ¶ 321.

State Order, 17 FCC Rcd at 26516-17 ¶ 384. The highly complex, fact-intensive analysis required to make such a predictive judgment is rightfully left to the discretion of an administrative agency. *Id.* ¶ 384 n.1417.

A. Qwest's Section 272 Affiliates

This application includes declarations on behalf of both QLDC and QCC, as well as QC, which demonstrate that Qwest will provide services in compliance with Section 272. ^{62/} The Commission has already determined in three orders with respect to thirteen states that QLDC, Qwest's current Section 272 affiliate, complies with Section 272. *Qwest 9-State Order*, 17 FCC Rcd at 26515-27 ¶¶ 380-405; *Qwest 3-State Order*, 18 FCC Rcd at 7390-92 ¶¶ 112-115; *Qwest Minnesota Order*, ¶¶ 62-65. There are no state-specific issues in a Section 272 finding; therefore, no new Section 272-related issues are presented by this application, and the Commission should make the same finding here.

Qwest has another affiliate, QCC, that is currently providing out-of-region interLATA services. Because of concerns that have arisen regarding QCC's compliance with Section 272(b)(2) in light of QCII's inability to certify its financial statements, Qwest will not designate QCC as an active Section 272 affiliate until its books, records, and accounts reflect the completion of QCII's financial restatement process. Once QCC's books, records, and accounts reflect the completion of that process, there should be no further doubt about QCC's compliance with Section 272(b)(2). QCC may then be designated as a Section 272 affiliate for providing authorized in-region interLATA services. The evidence presented in this application establishes that, subject to completion of the restatement process, QCC will comply with the requirements of

^{62/} Declarations of Marie E. Schwartz, Compliance with Section 272 by the BOC ("Schwartz Decl."); Ford B. Fay, Compliance with Section 272 by Qwest LD Corp. ("Fay Decl."); Jerome

Section 272. ^{63/} As demonstrated below, all of the Section 272–related controls upon which the Commission relied in the *Qwest 9-State Order*, the *Qwest 3-State Order*, and the *Qwest Minnesota Order* are in place for QCC; therefore, the Commission should conclude that, once QCC’s books reflect completion of the restatement process, it will be a compliant Section 272 affiliate.

Until QCC’s books reflect the completion of QCII’s restatement process, Qwest will provide interLATA services only through QLDC. Again, the Commission already has concluded that QLDC will operate in compliance with Section 272.

B. Qwest Will Comply with Each of the Requirements of Section 272

1. QLDC and QCC Are Separate Affiliates as Required by Section 272(a)

The BOC, QC, and its Section 272 affiliates, QLDC and QCC, satisfy the Section 272(a) requirement that a BOC may not provide in-region interLATA services except through an affiliate that both is “separate” from the BOC and meets the requirements of Section 272(b). QLDC and QCC are separate affiliates. Fay Decl. ¶ 15; Mueller Decl. ¶ 18. QC, QLDC, and QCC are wholly owned indirect subsidiaries of QCII. None of them own any stock in another. Fay Decl. ¶ 15; Mueller Decl. ¶ 18. The Commission affords BOCs “considerable flexibility” in how they structure their Section 272 affiliates and allows them to structure their operations consistent with their own business needs. *Qwest 9-State Order* ¶ 386.

R. Mueller, Compliance with Section 272 by Qwest Communications Corporation (“Mueller Decl.”), Att. 5, App. A.

^{63/} Qwest anticipates that, following completion of the restatement process, it will merge QCC and QLDC, although no final decisions have been made with regard to that process.

2. QC, QLDC, and QCC Will Comply with the Structural and Transactional Requirements of Section 272(b)

QLDC and QCC will be operated as independent carriers and will conduct business with QC on an arm's-length basis. Accordingly, as explained below, QC, QLDC, and QCC comply with the five requirements of Section 272(b).

272(b)(1): QLDC and QCC will operate independently from QC as required by Section 272(b)(1). The Commission has adopted four restrictions to implement this "operate independently" requirement: "(1) no joint ownership of transmission and switching facilities; (2) no joint ownership of the land and buildings on which switching and transmission facilities are located; (3) no provision by the BOC (or other non-section 272 affiliate) of operation, installation, and maintenance services (OI&M) with respect to the section 272 affiliate's facilities; and (4) no provision of OI&M by the section 272 affiliate with respect to the BOC's facilities." *Qwest 9-State Order* ¶ 387; see *Non-Accounting Safeguards Order*, 11 FCC Rcd at 21981-87 ¶¶ 156-170; 47 C.F.R. § 53.203(a). QLDC and QCC do not and will not own any domestic transmission or switching facilities, or the land and buildings where they are located, jointly with QC. Likewise, QLDC and QCC have not engaged and will not engage in any OI&M with respect to facilities owned by QC for as long as such a prohibition applies. Finally, QCC will operate, install, and maintain its own network, either directly or by contracting with third parties that are not affiliated with QC, for as long as such a prohibition applies. ^{64/} QLDC intends to commence Arizona operations as a switchless reseller of the interLATA services of other authorized carriers, but in the event it ever does acquire transmission or switching facilities,

^{64/} We note that the Commission is currently considering petitions to forbear from applying the OI&M restriction adopted in the *Non-Accounting Safeguards Order*. Qwest supports these petitions but will comply with the restriction unless and until it is removed. See Reply Comments of Qwest Services Corp. in Support of Verizon Petition for Forbearance, CC Docket No. 96-149, filed September 24, 2002.

it will comply with the same restrictions on OI&M. Schwartz Decl. ¶¶ 34-37; Fay Decl. ¶¶ 19-20; Mueller Decl. ¶¶ 21-22.

272(b)(2): Any Qwest Section 272 affiliate that provides in-region interLATA services will maintain books, records, and accounts that are separate from QC's in the manner prescribed by the Commission, including compliance with generally accepted accounting principles ("GAAP"). The Commission found in the *Qwest 9-State Order* that, in making its Section 272(b)(2) finding, it could rely in large part on "Qwest's implementation of extensive controls designed to prevent, detect, and correct any accounting irregularities in the future." *Qwest 9-State Order* ¶ 390. The Commission also concluded that Qwest demonstrated that "the current management will continue to take proactive measures to ensure that all transactions involving QLDC will be recorded in its books, accounts, and records in accordance with GAAP." *Id.* ¶ 394.

Under the leadership of Oren Shaffer, who has been Chief Financial Officer of QCII since July 2002, QCII is committed to accounting for its transactions in accordance with GAAP and has put into place measures to prevent, detect, and correct accounting irregularities in the future. ^{65/} Mr. Shaffer — who served as Chief Financial Officer of Ameritech for six years and as Chief Financial Officer of Goodyear Tire and Rubber Company before that — devoted significant time and effort to the question of QCII's past practices in accounting for the kinds of transactions identified in its SEC Form 8-K filed on July 29, 2002. Under his supervision and that of QCII's new Senior Vice President – Accounting and Financial Operations, QCII completed a two-month process of reconciliation involving approximately 4,500 individual accounts in QCII's general ledgers (including those of QC and QCC) and established a process

^{65/} See Letter from Oren G. Shaffer to Marlene H. Dortch (August 26, 2002), Attachment 5, Appendix P, Volume 2c, Tab 1.

of ongoing monitoring of all balance sheet accounts. Mr. Shaffer also has relied upon the retention of approximately 20 experienced consultants in order to ensure the sufficiency of accounting resources to account for new transactions properly, and the creation of a new Projects and Analysis Group responsible for establishing and managing the accuracy of Qwest's books, records, and accounts and implementing internal control enhancements. He has overseen the centralization of the supervision of accounting functions from business units to the Senior Vice President, the hiring of a highly qualified Assistant Controller, an increase in staffing in the technical accounting group, and the consolidation of accounting responsibilities for cash, accounts receivable, assets, revenues, and other functions.

The Commission found in the *Qwest 9-State Order* that QLDC had shown that it "has implemented adequate policies and controls that ensure GAAP compliance today and on a going-forward basis." *Qwest 9-State Order* ¶ 393. Nothing in this application can lead to any different conclusion. As for QCC, all of the same policies and controls are already in place, and the ongoing QCII restatement process will resolve any question about past transactions that may affect beginning balances on QCC's books. QCC will not provide in-region interLATA services before that restatement process is complete. Once QCC's books, records, and accounts reflect the completion of that restatement process, there can be no doubt about the compliance by QCC with Section 272(b)(2).

272(b)(3): QLDC's and QCC's officers, directors, and employees are not and will not be officers, directors, or employees of QC. In the New York and Texas 271 orders, the Commission found that a comparison of the BOC's and the Section 272 affiliate's officer and director lists and payrolls was sufficient to show compliance with Section 272(b)(3). *New York 271 Order*, 15 FCC Rcd at 4155 ¶ 409; *Texas 271 Order*, 15 FCC Rcd at 18551 ¶ 401. QC, QLDC, and QCC also have implemented extensive controls to govern sharing of services in

order to ensure that the companies operate independently and that confidential information is not shared between a 272 affiliate and the BOC. There is also a policy prohibiting any loaning of an employee between QC and a 272 affiliate. Schwartz Decl. ¶¶ 46-52; Fay Decl. ¶¶ 22-23; Mueller Decl. ¶¶ 24-25.

272(b)(4): QLDC and QCC will not obtain credit under any arrangement that would permit a creditor to have recourse to the assets of QC. Schwartz Decl. ¶¶ 53-56; Fay Decl. ¶¶ 24-27; Mueller Decl. ¶¶ 26-29.

272(b)(5): Individually QLDC and QCC will conduct all transactions with QC on an arm's-length basis, in accordance with this Commission's accounting rules, and will reduce all transactions to writing and make them available for public inspection. Procedures are in place that are designed to ensure that all transactions between a Section 272 affiliate and QC comply with the Commission's affiliate-transaction rules; that they are reduced to writing, certified by an officer, and made available for public inspection at QC's headquarters; and that they are recorded at rates that comply with the Commission's rules. All goods, services, facilities and information provided by QC to a 272 affiliate will be made available to other unaffiliated IXCs at the same rates, terms and conditions. Schwartz Decl. ¶¶ 57-70; Fay Decl. ¶¶ 28-38; Mueller Decl. ¶¶ 30-40.

3. QC Will Comply with the Nondiscrimination Safeguards of Section 272(c)

As required by Section 272(c)(1), QC will not discriminate between a 272 affiliate and any other entity in the provision or procurement of goods, services, facilities, and information, or in the establishment of standards. QC requires its 272 affiliates, QLDC and QCC, like any other IXC, to contact an account representative at QC to obtain goods, services, facilities and information. Schwartz Decl. ¶ 72. QC has established a Compliance Oversight

Team and a rigorous review process to ensure that it satisfies the requirement to provide services to its Section 272 affiliates on a nondiscriminatory basis. This process also ensures that all goods, services, facilities and information provided by QC to QLDC and QCC are reduced to writing, disclosed and made available to unaffiliated entities, and priced according to the requirements of the Commission's rules implementing Section 272(b)(5). In addition, QC and its affiliates adhere to a procurement policy that requires selection of suppliers of products and services without discrimination, based upon the best combination of total cost, quality, service, and availability. *Id.* ¶¶ 71-76.

As required by section 272(c)(2), QC will account for all transactions with either QLDC or QCC in accordance with the Commission's cost-allocation and affiliate-transaction rules. *Id.* ¶ 77. The Joint Cost Audit, annual SEC Form 10-K, and Cost Allocation Manual filings provide assurances that Qwest will comply with all required accounting principles. An examination of Qwest's Section 272 compliance by KPMG LLP conducted in late 2001 found virtually no substantial errors in QC's accounting for transactions with QCC. *See* Schwartz Decl. Exhibit MES-272-3. The few discrepancies found were not competition-affecting. In any event, QC and QCC used the results of KPMG LLP's report to strengthen the controls that are designed to prevent similar discrepancies, and a follow-up review by KPMG LLP confirmed that all such discrepancies had been corrected, all supplemental controls had been put into place, and that the new controls and enhancements "appear[ed] to strengthen the overall control environment with respect to Section 272 compliance." *See* Schwartz Decl. Exh. MES-272-4. Those strengthened controls were overlaid onto QLDC as well. As a result, the Commission can be confident that Qwest is ready to comply with the accounting safeguards of Section 272 upon grant of this application.

4. Qwest Will Comply with the Audit Requirements of Section 272(d).

The BOC will obtain and pay for an independent auditor to conduct a joint Federal/State audit every two years in accordance with Section 272(d) and the Commission's rules. A joint Federal/State biennial audit oversight team will determine the scope of each audit. The auditor will have access to the financial accounts and records of QC, QLDC, and QCC to verify that all transactions conducted between them were appropriate under the requirements of Section 272. The first such audit has already begun; QC has engaged an auditor and is cooperating to the fullest extent possible in providing any data necessary to assist the auditor in accomplishing its objective. Schwartz Decl. ¶ 80. The FCC will be given access to the working papers and supporting materials of the independent auditor, with appropriate protection for proprietary information. *Id.* ¶¶ 79-82.

5. Qwest Will Fulfill All Requests in Accordance with Section 272(e)

Qwest will comply with the provisions of Section 272(e). QC will not discriminate in favor of its 272 affiliates with respect to requests for exchange and exchange-access services. QC's response time for requests for telephone exchange service and exchange access from unaffiliated entities will be no longer than its response times with respect to itself or its affiliates, *see* 47 U.S.C. § 272(e)(1); *Non-Accounting Safeguards Order*, 11 FCC Rcd at 22019 ¶ 240, and it will provide goods, services, facilities and information concerning its provision of exchange access on a nondiscriminatory basis. *See* 47 U.S.C. § 272(e)(2). QLDC and QCC will obtain such services from QC under the same tariffed terms and conditions as are available to unaffiliated IXCs. QC will thus charge QLDC and QCC an amount "no less than the amount charged to any unaffiliated interexchange carriers for such service," as required by Section 272(e)(3). QC's sales representatives will process orders in a nondiscriminatory manner. To the extent that QC provides goods, facilities, information or services to QLDC or QCC, they

will be provided “at the same rates and on the same terms and conditions,” 47 U.S.C.

§ 272(e)(4), as are made available to all carriers. Schwartz Decl. ¶¶ 83-84. QC will maintain, update, and make available data on provisioning telephone exchange services and exchange access to either QLDC or QCC. *Id.* ¶ 86.

6. Qwest and Its Affiliates Will Comply with the Joint Marketing Provisions of Section 272(g)

QLDC and QCC will not market or sell QC’s local exchange services except to the extent that QC permits other entities offering the same or similar service to do the same. *See* 47 U.S.C. § 272(g)(1). QC will not market or sell QLDC’s or QCC’s interLATA service originating in an in-region state unless and until the FCC has granted Section 271 authority for that state. *See* 47 U.S.C. § 272(g)(2). Schwartz Decl. ¶¶ 86-90; Fay Decl. ¶¶ 39-44; Mueller Decl. ¶¶ 41-46.

7. QC’s, QLDC’s and QCC’s Education and Training Efforts Will Ensure Satisfaction of Their Obligations Under Section 272

The Schwartz, Fay, and Mueller Declarations describe the ongoing, comprehensive, and targeted training programs that will ensure that employees of QC, QLDC, and QCC (as well as other Qwest companies) understand and strictly observe the requirements of Section 272. Schwartz Decl. ¶¶ 91-99; Fay Decl. ¶¶ 45-49; Mueller Decl. ¶¶ 47-49.

VI. GRANT OF QWEST’S APPLICATION WILL PROMOTE COMPETITION IN BOTH THE LOCAL EXCHANGE AND INTEREXCHANGE MARKETS AND WILL SERVE THE PUBLIC INTEREST

Qwest has opened the local exchange market in Arizona and has provided adequate assurances that this market will remain open in the future, making the grant of its application “consistent with the public interest, convenience, and necessity.” 47 U.S.C. § 271(d)(3)(C).

A. Grant of Qwest's Application Is Consistent with Promoting Competition in Both the Local and Long Distance Markets

In evaluating previous Section 271 applications, the Commission has emphasized that "compliance with the competitive checklist is itself a strong indicator that long distance entry is consistent with the public interest." *New York 271 Order*, 15 FCC Rcd at 4161 ¶ 422; *see also Texas 271 Order*, 15 FCC Rcd at 18557-58 ¶ 416. Indeed, checklist compliance by definition signals that "barriers to competitive entry in the local market have been removed and [that] the local exchange market is open to competition." *New York Order*, 15 FCC Rcd at 4162-63 ¶ 426. Here, as demonstrated above, Qwest has satisfied the checklist in Arizona.

CLECs have captured a significant share of the market in Arizona. *See Teitzel Decl.* at nn.45-48 and accompanying charts. Qwest estimates CLEC market share in Arizona, as of May 31, 2003, to be between 18.8 and 20.6 percent. *Id.* Because these estimates were calculated, in part, using the same methodology used by SBC, they can be compared to the market shares that existed in Texas, Kansas, and Oklahoma when the FCC granted SBC's Section 271 applications for those states. In Arizona, there has been significantly greater entry than existed in Oklahoma (estimated at 5.5 to 9.0 percent) and Kansas (estimated at 9.0 to 12.6 percent) when SBC's application for those states was filed. *See Kansas/Oklahoma 271 Order*, 16 FCC Rcd at 6240 ¶¶ 4-5. Indeed, CLEC market shares in Arizona substantially exceed the market shares that existed in Texas (8.0 percent), *see Texas 271 Order*, 15 FCC Rcd at 18358 ¶ 5 & n.7. - even though Arizona is far less populous than Texas. *See Teitzel Decl.* at notes 50-51 and accompanying text.

The benefits of in-region, interLATA entry by BOCs already have been established by the experience of BOCs in other states and independent studies continue to confirm that the benefits to consumers of BOC entry into the long distance market are

substantial. A May 2001 study by the Telecommunications Research Action Center (“TRAC”) demonstrates that New York consumers will save up to \$284 million annually on long distance telephone service as a result of BOC entry into the interLATA market in that state. ^{66/} TRAC also has found that residential customers could save up to \$3 billion annually as a result of BOC interLATA market entry in the nine states it examined. ^{67/} There is every reason to believe that consumers in Arizona will experience similar benefits and savings if Qwest is allowed to offer interLATA long distance services.

Permitting Qwest to enter the long distance market would increase customer choice and competition in the *local* market as well. Experience has shown that a BOC’s imminent entry into the long distance market acts as a catalyst for CLECs to accelerate entry into local exchange markets. In particular, IXCs faced with the prospect of increased competition for their core long distance customers accelerate their local entry plans in an effort to retain those customers through bundled service packages. The data from New York bear this out. CLECs put their local entry plans into gear only once it became clear that Verizon’s Section 271 application would succeed. In the News Release announcing the Commission report entitled *Local Telephone Competition: Status as of January 31, 2000*, released May 21, 2001, the Commission concluded:

CLECs captured 20% of the market in the State of New York — the most of any state. CLECs reported 2.8 million lines in New York, compared to 1.2 million lines the prior year — an increase of over 130% from the time the FCC granted Verizon’s long distance application in New York in January 1999 to January 2000.

^{66/} See *TRAC Estimates New York Consumers Save Up to \$700 Million a Year on Local and Long Distance Calling*, Telecommunications Research Action Center, May 8, 2001. <http://trac.policy.net/proactive/newsroom/release.vtml?id=18740>.

^{67/} See *Maryland Consumers Could Save Up to \$155 Million a Year in Local and Long Distance Telephone Costs*, Telecommunications Research Action Center, June 18, 2002. <http://trac.policy.net/proactive/newsroom/release.vtml?id=19200>.

News Release, *Federal Communications Commission Releases Latest Data on Local Telephone Competition*, Federal Communications Commission (released May 21, 2001). Meanwhile, in its most recent report on Local Telephone Competition, released June 12, 2003, the Commission reported that the CLEC access line total in New York had grown to nearly 3.2 million lines, representing an increase in the CLEC market share to 25 percent. See Federal Communications Commission, *Local Telephone Competition: Status as of December 31, 2002* (released June 12, 2003).

Furthermore, data released by the New York State Public Service Commission reveal that the number of local exchange lines served by CLECs increased by more than 130 percent from 1999 to 2001 (from 10.7 to 24.0 percent) following the grant of Verizon's Section 271 application; and, for the first time since the New York PSC began collecting these statistics, more CLEC access lines were dedicated to residential customers (52 percent) than to business customers (48 percent). ^{68/} In total, New York consumers will save an estimated \$700 million annually on long distance and local telephone service. ^{69/}

Similarly impressive statistics have been reported for Texas. "CLECs have captured 12% of the market in Texas, gaining 644,980 end-user lines in the 6 months after the FCC granted SBC's Section 271 application — an increase of over 60% in customer lines since June 2000." See News Release, *Federal Communications Commission Releases Latest Data on Local Telephone Competition*, Federal Communications Commission (released May 21, 2001). The Commission's June 12, 2002 report shows a further increase in CLEC market share in Texas

^{68/} See New York State Public Service Commission, *Analysis of Local Exchange Service Competition in New York State Reflecting Company Reported Data and Statistics as of December 31, 2000* at 3, 4. <http://www.dps.state.ny.us/telecom/telanalysis.htm>.

to 17 percent. *See* Federal Communications Commission, *Local Telephone Competition: Status as of December 31, 2002* (released June 12, 2003). Permitting Qwest to enter the interLATA market should have a similar effect in Arizona, enabling customers to obtain expanded benefits of local competition.

B. Qwest Has Provided Adequate Assurances That the Local Exchange Market Will Remain Open to Competition After Section 271 Approval

Qwest proposes to implement a comprehensive set of performance measures and enforcement mechanisms in Arizona collectively referred to as the “QPAP.” *See generally* Declaration of Michael G. Williams, Arizona – Qwest Performance Assurance Plan (“Williams Decl.”). The QPAP was developed through a review process involving the ACC and CLECs operating in Arizona. It includes each of the components the Commission previously has concluded should be incorporated into an adequate post-entry performance assurance plan, and specifically has approved with respect to Qwest. *See, e.g., Qwest 9-State Order* ¶¶ 440-452; *Qwest 3-State Order* ¶¶ 119-123; *Qwest Minnesota Order* ¶¶ 69-72.

The QPAP encompasses all the major wholesale services and functions relied upon for each different CLEC market entry strategy. The performance measurements in the QPAP cover (1) Electronic Gateway Availability; (2) Preordering; (3) Ordering; (4) Provisioning; (5) Maintenance and Repair; (6) Billing; (7) Network Performance; and (8) Collocation; and (9) Change Management. Williams Decl. ¶ 13. In order to ensure that the performance results will be accurate and reliable, Qwest will provide to each CLEC a monthly report detailing the level of service it has received from Qwest under the QPAP’s performance

^{69/} *See TRAC Estimates New York Consumers Save Up to \$700 Million a Year on Local and Long Distance Calling*, Telecommunications Research Action Center, May 8, 2001; <http://trac.policy.net/proactive/newsroom/release.vtml?id=18740>.